

MONTANA LEGISLATIVE HISTORY

Chapter 218 19 91

Bill H 113 S _____

Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) 1-11 ☒ C

 ☐ C

 ☐ C

 ☐ C

Date Out ☐ C

S. Committee on Judiciary

Hearing Date(s) 1-25 ☒ C

1-28 ☒ C

 ☐ C

 ☐ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee

Report

HOUSE FINAL STATUS

HB 114

	RETURNED TO HOUSE WITH AMENDMENTS		
3/21	2ND READING AMENDMENTS CONCURRED	89	1
3/23	3RD READING AMENDMENTS CONCURRED	99	0
3/27	SIGNED BY SPEAKER		
3/27	SIGNED BY PRESIDENT		
3/27	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 290		

EFFECTIVE DATE: 4/01/91

HB 112 INTRODUCED BY DRISCOLL

REMOVE EMPLOYER CHILD SUPPORT INQUIRY

1/07	INTRODUCED		
1/07	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/08	FIRST READING		
1/22	HEARING		
1/22	TABLED IN COMMITTEE		

HB 113 INTRODUCED BY LEE, ET AL.

REVISE DEFINITION OF WITHOUT CONSENT FOR RAPE

1/07	INTRODUCED		
1/07	REFERRED TO JUDICIARY		
1/08	FIRST READING		
1/11	HEARING		
1/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/15	2ND READING PASSED	99	0
1/17	3RD READING PASSED	100	0
	TRANSMITTED TO SENATE		
1/18	FIRST READING		
1/18	REFERRED TO JUDICIARY		
1/25	HEARING		
1/28	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
1/29	2ND READING CONCURRED	49	0
1/30	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
2/01	2ND READING AMENDMENTS NOT CONCURRED	87	12
2/04	CONFERENCE COMMITTEE APPOINTED		
3/08	CONFERENCE COMMITTEE REPORT NO. 1		
3/11	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	99	0
3/12	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	97	1
	SENATE		
2/05	CONFERENCE COMMITTEE APPOINTED		
3/08	CONFERENCE COMMITTEE REPORT NO. 1		
3/16	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
3/18	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
3/23	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 218		

EFFECTIVE DATE: 10/01/91

HB 114 INTRODUCED BY D. BROWN, ET AL.

NOTIFICATION TO SHERIFFS OF ESCAPE
OR RELEASE FROM CONFINEMENT

1/08	INTRODUCED		
1/08	REFERRED TO JUDICIARY		
1/09	FIRST READING		
1/16	HEARING		

1 HOUSE BILL NO. 113
 2 INTRODUCED BY Thomas Lee Van Valkenburg
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE TERM
 5 "FORCE" AS IT RELATES TO SEXUAL INTERCOURSE WITHOUT CONSENT
 6 AND TO DEVIATE SEXUAL CONDUCT; AND AMENDING SECTIONS
 7 45-5-501 AND 45-5-503, MCA."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 45-5-501, MCA, is amended to read:

11 "45-5-501. Definition. (1) As used in 45-5-503 and
 12 45-5-505, the term "without consent" means:

13 (1)(a) the victim is compelled to submit by force or by
 14 ~~threat of imminent death, bodily injury, or kidnapping to be~~
 15 ~~inflicted on anyone against himself or another; or~~

16 (2)(b) the victim is incapable of consent because he
 17 is:

18 (a)(i) mentally defective or incapacitated;

19 (b)(ii) physically helpless; or

20 (c)(iii) less than 16 years old.

21 (2) As used in subsection (1), the term "force" means:

22 (a) the infliction or attempted infliction of bodily
 23 injury or the commission of another crime by the offender;

24 (b) the threatened infliction of bodily injury or the
 25 threat of another crime by the offender that causes the

1 victim to reasonably believe that the offender has the
 2 present ability to execute the threat; or
 3 (c) the threat of retaliatory action that causes the
 4 victim to reasonably believe that the offender has the
 5 ability to execute the threat."

6 **Section 2.** Section 45-5-503, MCA, is amended to read:

7 "45-5-503. Sexual intercourse without consent. (1) A
 8 person who knowingly has sexual intercourse without consent
 9 with a person of the opposite sex commits the offense of
 10 sexual intercourse without consent. A person may not be
 11 convicted under this section based on the age of his spouse
 12 as provided in 45-5-501(2)(c)(1)(b)(iii).

13 (2) A person convicted of sexual intercourse without
 14 consent shall be imprisoned in the state prison for a term
 15 of not less than 2 years or more than 20 years and may be
 16 fined not more than \$50,000, except as provided in
 17 46-18-222.

18 (3) (a) If the victim is less than 16 years old and the
 19 offender is 3 or more years older than the victim or if the
 20 offender inflicts bodily injury upon anyone in the course of
 21 committing sexual intercourse without consent, he shall be
 22 imprisoned in the state prison for any term of not less than
 23 2 years or more than 40 years and may be fined not more than
 24 \$50,000, except as provided in 46-18-222.

25 (b) An act "in the course of committing sexual

1 intercourse without consent" shall include an attempt to
2 commit the offense or flight after the attempt or
3 commission.

4 (4) In addition to any sentence imposed under
5 subsection (2) or (3), after determining the financial
6 resources and future ability of the offender to pay
7 restitution as required by 46-18-242, the court shall
8 require the offender, if able, to pay the victim's
9 reasonable costs of counseling that result from the offense.
10 The amount, method, and time of payment must be determined
11 in the same manner as provided for in 46-18-244."

-End-

CHAIRMAN--BILL STRIZICH
NORMAL SCHEDULE==> SITE: ROOM 312-2

DAYS: M,T,W,T,F

TIME: 8:00 A.M.

SECRETARY--JEANNE DOMME

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0074	1/03	2/07		DO PASS		2/11
STRIZICH, BILL			AUTHORIZE A LEVY FOR JUVENILE DETENTION PROGRAMS			
HB0075	1/25	2/07		TABLED ON 02/08		
RICE, JIM			SURTAX ON LICENSING OF VIDEO GAMBLING MACHINES TO FUND JUVENILE DETENTION			
HB0092	1/03	1/18		TABLED ON 01/21		
DOLEZAL, ED			AUTHORIZE IGNITION INTERLOCK DEVICES FOR DUI OFFENSES			
HB0100	1/05	1/18		TABLED ON 01/23		
RUSSELL, ANGELA			GARNISHMENT & ATTACHMENT OF PROPERTY FOR FAILURE TO PAY MINOR TRAFFIC FINES			
HB0101	1/05	1/18		PASS AS AMENDED		1/22
RUSSELL, ANGELA			SERVE DUI SENTENCES IN SECURE FACILITIES OTHER THAN JAILS			
HB0109	1/05	1/14		DO PASS		1/15
BROOKE, VIVIAN			PROVIDE VICTIM AND WITNESS ASSISTANCE IN JUVENILE FELONY CASES			
HB0113	1/07	1/11		PASS AS AMENDED		1/12
LEE, THOMAS			REVISE DEFINITION OF WITHOUT CONSENT FOR RAPE			
HB0114	1/08	1/16		PASS AS AMENDED		1/18
BROWN, DAVE			NOTIFICATION TO SHERIFFS OF ESCAPE OR RELEASE FROM CONFINEMENT			
HB0120	1/08	1/16		PASS AS AMENDED		1/16
HAYNE, HARRIET			CREATE FARM ANIMAL AND RESEARCH FACILITY PROTECTION ACT			
HB0128	1/09	1/15		TABLED ON 01/15		
FAGG, RUSSELL			CLARIFY CRIME OF UNLAWFUL POSSESSION OF INTOXICATING SUBSTANCE			
HB0129	1/09	1/15		ADVERSE RPT ADOPT		1/17
FAGG, RUSSELL			IMPOUND VEHICLE OF PERSON DRIVING WHILE LICENSE SUSPENDED OR REVOKED			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 11, 1991,
at 8 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chairman (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Russell

Staff Present: John MacMaster Legislative Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON HB #113 REVISE DEFINITION OF WITHOUT CONSENT FOR RAPE

Presentation and Opening Statement by Sponsor:

REP. LEE stated this bill is to enact and define the term "force" as it relates to sexual intercourse without consent and deviate sexual conduct.

Proponents' Testimony:

John Conner, Dept. of Justice, appearing on behalf of the Montana County Attorney Association. This bill was requested by the Montana County Attorney's Association to correct a problem in the law relating what constitutes consent in cases of sexual intercourse without consent and to deviate sexual conduct. The problem this bill addresses arose as a result of a case that was prosecuted in Judith Basin County. The case was State of Montana vs. Gerald Roy Thompson. It was regarding a principal telling a student if she didn't perform oral sex on him, she would not graduate. He was charged with two counts of sexual intercourse without consent as a result of these threats. The motion was made in the District Court by the defense to dismiss the case on grounds that the allegations relating to the defense did not fall within the statutory definition of "without consent". The court agreed with the defendant and dismissed the case. It was found that the term "force" in its usual connotation implies physical compulsion or immediate threat to bodily harm or injury and that was not present in this case.

We looked at language that serves to define the terms "force" and threat from other states. We believe that this bill addresses these concerns and problems pointed out by the Thompson case and serves to correct inequitable situations that appear in this statute dealing with a very serious and devastating act of violence.

Amy Pfeifer, Secretary-Treasure, Women's Section, State Bar of Montana, gave written testimony. EXHIBIT 1

Diane Sands, Executive Director of the Montana Women's Lobby, gave written testimony. EXHIBIT 2

Opponents' Testimony: none

Questions From Committee Members:

REP. BOHARSKI asked John Conner where "commission of another crime by the offender" in Sec. 1 came from and why it should be appropriate to this case? The original language seems to be more appropriate here. Mr. Conner said the language means that bodily injury, per se, is not a crime, but in a crime in which there is some attempted bodily injury or any other attempt of direct action. It is not directed to situations of someone stealing a car or something of that nature. We would agree to correct that section to make it more precise.

REP. TOOLE asked Mr. Conner if the "threat of retaliatory" language will cause any dilemmas for prosecutors? Mr. Conner said it depends on the gravity of retaliation. We are worried about limiting the opportunity for people to be charged in situations where it might be appropriate.

REP. MEASURE asked Mr. Conner if there are provisions within the law that you are aware of that would allow prosecution of individuals for intimidation? Mr. Conner said there is a felony intimidation statute that is very difficult to obtain a conviction on. The language is fairly broad and not very often used.

REP. MEASURE asked Mr. Conner if he was aware what that penalty is? Mr. Conner said he thought it was ten years. The statute in this bill has a penalty of 40 years.

Closing by Sponsor:

REP. LEE stated there is a victim that has not received justice because of the language of this bill. It is imperative that we not allow this particular type of situation to continue to be unaddressed.

EXECUTIVE ACTION ON HB #113

Motion: REP. BOHARSKI MOVED HB 113 DO PASS.

Discussion:

REP. BOHARSKI stated he was worried about the language in Section 1 reading "commission of another crime by the offender". He asked John MacMaster if that language would change the meaning of the bill. Mr. MacMaster said it would not.

Motion: REP. TOOLE made a substitute motion to amend HB 113 by deleting subsection C of section 1.

Motion: REP. BROOKE made a substitute motion to amend HB 113 by deleting subsection C of section 1 and include the words "significant" or "substantial".

Discussion:

REP. MEASURE stated even the words significant or substantial are open to interpretational as a retaliatory action. There are other areas of law to address this.

Vote: Motion carried.

Motion: REP. LEE MOVED HB 113 DO PASS AS AMENDED.

Discussion:

REP. WHALEN asked John MacMaster how the intimidation statute reads? John MacMaster read the intimidation statute to the committee. REP. WHALEN asked John MacMaster if the committee should add the word "rape" to the intimidation statute and leave

the rest of the bill as is. John MacMaster said the committee could go into the intimidation statute and amend it to say if a person intimidates somebody into doing something, this is the penalty, and if that something is to submit to a sexual act, the penalty will be greatly enhanced.

REP. JOHNSON said he felt the people who attempted to put this statute together understood it very well. Those of us who are not in the legal fraternity can't understand it as well and we should pass the law as it was written.

REP. BOHARSKI stated, "We are dealing with some of the most emotional cases to come into a court room. The committee should spend the extra time to get the language in the bill exactly the way we want it in order to keep a prosecutor from swaying a jury one way or the other."

Motion: REP. BOHARSKI moved to amend HB 113 by deleting the words "another crime by the defender" and insert the words "a forcible felony" on line 23.

Discussion:

REP. BROOKE asked Mr. Conner if they agree to this proposed amendment. Mr. Conner said yes.

Motion: Motion carried.

Motion/Vote: REP. TOOLE MOVED HB 113 DO PASS AS AMENDED. Motion carried.

HEARING ON HB #69

REVISE ESTABLISHMENT, NUMBER, SALARY, ELEC. OF MUNI. CT. JUDGES

Presentation and Opening Statement by Sponsor:

REP. WHALEN stated this bill provides a mechanism for Municipal Courts around the state.

Proponents' Testimony:

Larry Herman, City Judge of the City of Laurel, gave written testimony for HB #69. EXHIBIT 3

Opponents' Testimony: NONE

Information Testimony:

Patricia Bradley, Lobbyist for the Montana Magistrates Association, gave written testimony for HB #69. EXHIBIT 4

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 1-11-91

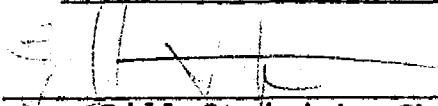
NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL			/
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

STANDING COMMITTEE REPORT

January 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 113 (first reading copy -- white) do pass as amended.

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Page 1, line 23.

Strike: "another crime"

Insert: "a forcible felony"

2. Page 2, line 3.

Following: "threat of"

Insert: "significant or substantial"

1-11-91
Exhibit 1

EXHIBIT 1
DATE 1-11-91
HB 113

January 11, 1990

To: House Judiciary Committee

From: K. Amy Pfeifer, Secretary-Treasurer, Women's Section,
State Bar of Montana on behalf of Women's Section

Re: House Bill 113 - An Act to Define the Term "Force" as it
Relates to Sexual Intercourse Without Consent and to
Deviate Sexual Conduct

The Women's Section of the State Bar of Montana supports HB 113. The need for a definition of the term "force" was brought to the attention of the Women's Section of the State Bar and the public with the Montana Supreme Court's decision in State of Montana v. Gerald Roy Thompson, 47 St. Rptr. 1065, decided May 24, 1990.

The following information is presented when reviewing that case and its' district court history. In May 1989 Gerald Roy Thompson was charged in Judith Basin County with two counts of sexual intercourse without consent and one count of sexual assault. Mr. Thompson was principal and boys basketball coach of Hobson High School. The charges stem from the allegations of a former high school student at Hobson High, since graduated, who alleged that on more than one occasion while she was a student, Mr. Thompson forced her to engage in oral sexual intercourse by threatening that she would not graduate from high school. The affidavits supporting the charges alleged that the threats caused the victim great psychological pain and fear.

Mr. Thompson moved in the district court to dismiss the two charges of sexual intercourse without consent, arguing that the state had failed to state an offense. This argument was based upon reference to the definition of "without consent" which, in pertinent part, provides that the term means the victim is compelled to submit by force or threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone. The word "force" is not defined in MCA §§ 45-5-501, 45-5-503, or 45-5-505, but the district court adopted as a definition, by stating that it is used in its ordinary and normal connotation, "physical compulsion, the use or immediate threat of bodily harm, injury."

The district court agreed with the defendant and dismissed the two counts of sexual intercourse without consent. In so dismissing, the district court stated that the threat must be a threat of death or imminent bodily injury; that psychological impact is not sufficient, although it commented that "maybe it should be."

The state appealed the dismissal of these two counts of sexual intercourse without consent. The Montana Supreme Court affirmed, again looking to the specific definition of "without consent", and adopting the district court's definition of "force" as requiring

Ex. 1

1-11-91

HB 113

physical compulsion, or use or threat of bodily harm; injury. The court stated that it agreed that Mr. Thompson intimidated the victim, and that "until the legislature adopts a definition of the word 'force', we must adopt the ordinary and normal definition of the word 'force' as set forth by the District Court."

The court also sent a message to the legislature to take a look at this problem when it stated,

The alleged facts, if true, show disgusting acts of taking advantage of a young person by an adult who occupied a position of authority over the young person. If we could rewrite the statutes to define the alleged acts here as sexual intercourse without consent, we would willingly do so. The business of the courts, however, is to interpret statutes, not to rewrite them, nor to insert words not put there by the legislature.

A copy of the Montana Supreme Court opinion is attached.

A number of states have broadened their definitions of force or coercion to include a threat of retaliatory action, a threat to harm a third person, or to commit a criminal act against the victim in the future. Included within this list are the states of Virginia, New Hampshire, New Mexico, Rhode Island, California, Minnesota and New York.

The Women's Section of the State Bar of Montana believes that HB 112 offers to Montana's citizens the best of the criminal law protections offered by all these states. We hope you agree, as we believe the citizens of this state do, that the type of behavior alleged in the Thompson case is rape, sexual intercourse without consent. The Women's Section of the State Bar of Montana wholeheartedly urges the passage of HB 112.

STATE REPORTER
Box 749
Helena, Montana 59624

VOLUME 47

No. 89-533

Ex. 1

1-11-91

HB 113

p. 1065-1070

STATE OF MONTANA,

Plaintiff & Appellant,

v.

Submitted: Feb. 22, 1990

Decided: May 24, 1990

GERALD ROY THOMPSON,

Defendant & Respondent.

CRIMINAL LAW, Sexual Intercourse Without Consent and Sexual Assault, Appeal by State from dismissal of Counts I and II for lack of probable cause in the supporting affidavit. The Supreme Court held:

1. The element of "without consent" is satisfied if submission of the victim is obtained either by force or by threat of imminent death, bodily injury, or kidnapping. No other circumstances relating to force or threat eliminate consent under the statute.

2. A threat that eventually leads to psychological impairment is not sufficient under the statute.

Appeal from the Tenth Judicial District Court, Judith Basin County, Hon. Peter J. Rapkoch, Judge

For Appellant: Mark Murphy, Assistant Attorney General, Helena
Patti Powell, Assistant Attorney General, Helena
Sarah Arnott, Judith Basin County Atty., Stanford

For Respondent: Torger Oaas, Attorney at Law, Lewistown

Submitted on briefs.

Opinion by Justice Sheehy; Chief Justice Turnage and Justices Harrison, Hunt and McDonough concur.

Affirmed.

____ Mont. ____

____ P.2d ____

MONTANA WOMEN'S LOBBY

P.O. Box 1099

Helena, MT 59624

406/449-7917

1-11-91
Exhibit 2

House Judiciary
EXHIBIT 2
DATE 1-11-91
HB 113

HOUSE BILL 113
RECOMMEND: DO PASS

1/11/91

Mr. Chairman, members of the Committee, my name is Diane Sands, Executive Director of the Montana Women's Lobby. We rise in support of HB 113.

The technical provisions of this bill have been addressed by those who have gone before me. This needed addition to the definition of "force" is one of several changes in the Sexual Crimes section of MCA that the Montana Women's Lobby will be supporting this session. We urge adoption of HB113 on behalf of 2 of our constituencies. First, the rape crisis programs across the state that provide services to victims. Secondly, we urge adoption on behalf of the victims of sexual crimes. One in three women and one in five men are victims of a sexual assault during their lifetime. I wish I could tell you that passing this law will change those statistics, but it will not. What it will do, however, is expand the likelihood that a few more perpetrators will be brought to justice. That end result is a worthy one. We urge your support of HB 113.

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
 FINAL COMMITTEE REPORT OF REFERRED BILLS
 COMMITTEE--(S) JUDICIARY

PAGE NBR..... 3
 RUN TIME09:18
 RUN DATE.... 05/20/91

CHAIRMAN--RICHARD PINSONEAULT
 NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: M,T,W,T,F

TIME: 10:00 A.M.

SECRETARY--JOANN BIRD

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0103 RUSSELL, ANGELA	3/28	4/09	PROHIBIT PRETRIAL DETENTION OF MENTALLY ILL PERSONS IN JAIL	CONCUR AS AMENDED		4/12
HB0109 BROOKE, VIVIAN	1/21	3/08	PROVIDE VICTIM AND WITNESS ASSISTANCE IN JUVENILE FELONY CASES	CONCUR		3/08
HB0110 GILBERT, BOB	2/27	3/21	ALLOW BLOOD/URINE TESTING OF COMM'L CARRIERS EMPLOYEES AND APPLICANTS	CONCUR AS AMENDED		3/23
HB0113 LEE, THOMAS	1/18	1/25	REVISE DEFINITION OF WITHOUT CONSENT FOR RAPE	CONCUR AS AMENDED		1/28
HB0114 BROWN, DAVE	1/25	2/01	NOTIFICATION TO SHERIFFS OF ESCAPE OR RELEASE FROM CONFINEMENT	CONCUR AS AMENDED		2/05
HB0131 BROOKE, VIVIAN	3/13	3/22	HUMAN SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT	CONCUR		3/22
HB0132 BROWN, DAVE	1/22	1/29	CLARIFY PLACE OF TRIAL FOR TORT WHEN DEFENDANT IS A NONRESIDENT	CONCUR	JUDICIARY	1/31
HB0132 BROWN, DAVE	2/04		CLARIFY PLACE OF TRIAL FOR TORT WHEN DEFENDANT IS A NONRESIDENT	TABLED ON 03/19		
HB0148 TOOLE, HOWARD	1/29	2/07	ALLOW HOME ARREST IN LIEU OF INCARCERATION--MISDEMEANOR & FELONY	CONCUR AS AMENDED		2/12
HB0155 STRIZICH, BILL	4/04	4/10	GENERALLY REVISE SALARY OF COUNTY ATTORNEYS	CONCUR AS AMENDED		4/11
HB0159 CONNELLY, MARY ELLEN	1/31	3/19	ALLOW CAUSE OF ACTION AGAINST BIDDER FAILING TO CARRY INSURANCE	CONCUR AS AMENDED		4/04

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on January 25, 1991,
at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Mike Halligan (D)
John Harp (R)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: Lorents Grosfield (R) and Joseph Mazurek (D)

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HOUSE BILL 113

Presentation and Opening Statement by Sponsor:

Representative Thomas Lee, District 49, told the Committee HB 113 defines the term "force" as it relates to sexual intercourse without consent and to deviate sexual conduct.

Proponents' Testimony:

John Connor, Montana County Attorneys, advised the Committee that the bill was requested by the County Attorneys to correct a problem in law regarding the term "force" which resulted from a case heard in 1989 in Judith Basin County. He said the Office of the Attorney General prosecuted the case as Judith Basin County Attorney Sarah Arnott had conflicting interests.

Mr. Connor said the case involved an alleged rape by a Hobson High School principal of a high school student, and that the

principal was charged with two counts of sexual intercourse without consent. He explained that the district court ruled against the student, and the case was appealed by the State to the Supreme Court, who agreed with district court.

Mr. Connor said the consent statute now means the victim is compelled by force but the definition of force in this bill would mean physical compulsion or bodily threat of injury. He said that in State vs. Thompson the Court determined that "threat" was not appropriate either and it could not be prosecuted.

Mr. Connor stated that the Court concluded its opinion with this language, "This case is one of considerable difficulty for us, as indeed as it must have been for the district court judge. The alleged facts, if true, show disgusting acts of taking advantage of a young person by an adult who occupied a position of authority over the young person. If we could rewrite the statutes to define the alleged acts here as sexual intercourse without consent, we would willingly do so. The business of courts, however, it not to interpret statutes, not to rewrite them nor insert words not put there by the Legislature. With a good deal of reluctance, with a strong condemnation of the alleged acts we affirm the district court."

Mr. Connor said language in the bill is based on Minnesota statute and some references to retaliatory threat in the Thompson case. He stated he believes this legislation needs to be dealt with.

K. Amy Pfeifer, Women's Law Section of the State Bar, provided the Committee with copies of the Thompson case (Exhibit #1). She said the courts made clear the fact that they were hamstrung by the definition of "force". Ms. Pfeifer explained that a number of states have broadened their definition of force - Virginia, New Hampshire, Rhode Island, New Mexico, California, and New York. She added that HB 113 offers the best of provisions from those states, and urged the Committee to pass the bill.

Diane Sands, Executive Director, Womens Lobby, said this is a needed change in sex crimes codes. On behalf of crime victims and support groups, she urged the Committee to pass the bill. Ms. Sands stated that one in three women are victims of sexual assault during their life and that number is one in five for men.

Opponents' Testimony:

There were no opponents of ^HSB 113.

Questions From Committee Members:

Senator Halligan asked about "significant or substantial" on page 2 of the bill. John Connor replied that language was not in the original bill and was inserted by the House. He said he believed the use of these terms gives rise to possible jury

confusion and can result in a hung jury situation, as a threat of retaliation may mean something different to one than to another. He agreed with Senator Halligan, and said he would rather the language were in the bill.

Senator Halligan asked who proposed this language. John Connor replied it was proposed by Representative Brooke.

Chairman Pinsoneault said he had the same concern, and asked if the victim has pursued civil action. K. Amy Pfeifer replied there are suits back and forth between the parties.

Closing by Sponsor:

Representative Lee said he would agree to deleting the language added by the House, and asked the Committee to support HB 113.

HEARING ON HOUSE BILL 11

Presentation and Opening Statement by Sponsor:

Representative Bob Pavlovich, District 70, explained that if the Legislature does not pass the veterans preference bill, Montana will be the only state in the U.S. without veterans preference.

Proponents' Testimony:

Mike Micone, Commissioner of Labor, Department of Labor and Industry, asked the Committee to give swift support of HB 11, especially in view of Operation Desert Storm.

Tom Pouliot, Commissioner, Veterans of Foreign Wars, said some veterans will be coming back to look for work and will have lost jobs. He stated he believes Montana should assist those veterans, and asked the Committee to support HB 11.

Rich Brown, State Administrator, Montana Board of Veterans Affairs, said there is a need to support all veterans in the state.

Hal Manson, American Legion, Department of Montana, told the Committee he felt strongly about this bill and appreciated their support.

Dick Baumberger, Disabled American Veterans, Department of Montana, urged the Committee to support the bill.

John Mahan, Commander, Veterans of Foreign Wars of the United States, urged support of HB 11.

Dan Antonietti, Director, Veterans Employment and Training, U.S. Department of Labor, told the Committee a similar situation

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1999

Date 25 Jan 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

Exhibit #1
25 Jan 91
HB 113

January 25, 1990

To: Senate Judiciary Committee

From: K. Amy Pfeifer, Secretary-Treasurer, Women's Law Section,
State Bar of Montana on behalf of Women's Law Section

Re: House Bill 113 - An Act to Define the Term "Force" as it
Relates to Sexual Intercourse Without Consent and to
Deviate Sexual Conduct

At the outset I want to make clear that the following is not necessarily the position of the State Bar of Montana. I am speaking on behalf of the Women's Law Section of the State Bar of Montana.

The Women's Law Section supports HB 113.

The need for a definition of the term "force" was brought to the attention of the Women's Law Section of the State Bar and the public with the Montana Supreme Court's decision in State of Montana v. Gerald Roy Thompson, 47 St. Rptr. 1065, decided May 24, 1990.

The following information is presented when reviewing that case and its district court history. In May 1989 Gerald Roy Thompson was charged in Judith Basin County with two counts of sexual intercourse without consent and one count of sexual assault. Mr. Thompson was principal and boys basketball coach of Hobson High School. The charges stem from the allegations of a former high school student at Hobson High, since graduated, who alleged that on more than one occasion while she was a student, Mr. Thompson forced her to engage in oral sexual intercourse by threatening that she would not graduate from high school. The affidavits supporting the charges alleged that the threats caused the victim great psychological pain and fear.

Mr. Thompson moved in the district court to dismiss the two charges of sexual intercourse without consent, arguing that the state had failed to state an offense. This argument was based upon reference to the definition of "without consent" which, in pertinent part, provides that the term means the victim is compelled to submit by force or threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone. The word "force" is not defined in MCA §§ 45-5-501, 45-5-503, or 45-5-505, but the district court adopted as a definition, by stating that it is used in its ordinary and normal connotation, "physical compulsion, the use or immediate threat of bodily harm, injury."

The district court agreed with the defendant and dismissed the two counts of sexual intercourse without consent. In so dismissing, the district court stated that the threat must be a threat of death

or imminent bodily injury; that psychological impact is not sufficient, although it commented that "maybe it should be."

The state appealed the dismissal of these two counts of sexual intercourse without consent. The Montana Supreme Court affirmed, again looking to the specific definition of "without consent", and adopting the district court's definition of "force" as requiring physical compulsion, or use or threat of bodily harm; injury. The court stated that it agreed that Mr. Thompson intimidated the victim, and that "until the legislature adopts a definition of the word 'force', we must adopt the ordinary and normal definition of the word 'force' as set forth by the District Court."

The court also sent a message to the legislature to take a look at this problem when it stated,

The alleged facts, if true, show disgusting acts of taking advantage of a young person by an adult who occupied a position of authority over the young person. If we could rewrite the statutes to define the alleged acts here as sexual intercourse without consent, we would willingly do so. The business of the courts, however, is to interpret statutes, not to rewrite them, nor to insert words not put there by the legislature.

A copy of the Montana Supreme Court opinion is attached.

A number of states have broadened their definitions of force or coercion to include a threat of retaliatory action, a threat to harm a third person, or to commit a criminal act against the victim in the future. Included within this list are the states of Virginia, New Hampshire, New Mexico, Rhode Island, California, Minnesota and New York.

The Women's Law Section of the State Bar of Montana believes that HB 113 offers to Montana's citizens the best of the criminal law protections offered by all these states. We hope you agree, as we believe the citizens of this state do, that the type of behavior alleged in the Thompson case is rape, sexual intercourse without consent. The Women's Section of the State Bar of Montana wholeheartedly urges the passage of HB 113.

STATE REPORTER
Box 749
Helena, Montana 59624

VOLUME 47

No. 89-533

Ex 1
1-25-91
HB113

STATE OF MONTANA,

Plaintiff & Appellant,

v.

Submitted: Feb. 22, 1990

Decided: May 24, 1990

GERALD ROY THOMPSON,

Defendant & Respondent.

CRIMINAL LAW, Sexual Intercourse Without Consent and Sexual Assault, Appeal by State from dismissal of Counts I and II for lack of probable cause in the supporting affidavit. The Supreme Court held:

1. The element of "without consent" is satisfied if submission of the victim is obtained either by force or by threat of imminent death, bodily injury, or kidnapping. No other circumstances relating to force or threat eliminate consent under the statute.

2. A threat that eventually leads to psychological impairment is not sufficient under the statute.

Appeal from the Tenth Judicial District Court, Judith Basin County, Hon. Peter J. Rapkoch, Judge

For Appellant: Mark Murphy, Assistant Attorney General, Helena
Patti Powell, Assistant Attorney General, Helena
Sarah Arnott, Judith Basin County Atty., Stanford

For Respondent: Torger Oaas, Attorney at Law, Lewistown

Submitted on briefs.

Opinion by Justice Sheehy; Chief Justice Turnage and Justices Harrison, Hunt and McDonough concur.

Affirmed.

____ Mont. ____

____ P.2d ____

State of Montana, Plaintiff and Appellant, v.
Thompson, Defendant and Respondent
47 St.Rep. 1065

Justice Sheehy delivered the Opinion of the Court.

On May 25, 1989, the defendant Gerald Roy Thompson was charged with two counts of sexual intercourse without consent and one count of sexual assault. Subsequently, Thompson moved to dismiss Counts I and II of the information, those counts charging defendant with sexual intercourse without consent. Thompson moved to dismiss Counts I and II of the information on the specific ground that the probable cause affidavit was insufficient. On September 1, 1989, the District Court, Tenth Judicial District, Judith Basin County, granted Thompson's motion and dismissed Counts I and II of the information for lack of probable cause in the supporting affidavit. The State now appeals the District Court. We affirm.

The State raised the following issue on appeal: Did the District Court err when it granted defendant's motion to dismiss Counts I and II of the information charging defendant with sexual intercourse without consent for failure to state offenses?

The defendant, Gerald Roy Thompson, the principal and boys basketball coach at Hobson High School, was accused of two counts of sexual intercourse without consent, and one count of sexual assault. This appeal only concerns the two counts of sexual intercourse without consent. The information, filed with the District Court, alleged the defendant committed the crime of sexual intercourse without consent, and stated the following:

"Count I

On or between September, 1986 and January, 1987 in Judith Basin County, Montana the defendant knowingly had sexual intercourse without consent with a person of the opposite sex; namely Jane Doe, by threatening Jane Doe that she would not graduate from high school and forced Jane Doe to engage in an act of oral sexual intercourse.

"Count II

On or between February, 1987 and June, 1987 in Judith Basin County, Montana the defendant knowingly had sexual intercourse without consent with a person of the opposite sex; namely Jane Doe, by threatening Jane Doe that she would not graduate from high school and forced Jane Doe to engage in act of oral sexual intercourse."

The affidavits filed in support of this information contained facts and allegations supporting the two counts of sexual intercourse without consent. In essence, they alleged that the threats "caused Jane Doe great psychological pain and fear."

The State contended that fear of the power of Thompson and his authority to keep her from graduating forced Jane Doe into silence until after she graduated from high school in June of 1987. On November 25, 1988, Jane Doe filed a letter with the Hobson School Board describing the activities against her by Thompson. After investigations by both the school board and the Judith Basin County prosecutor's office, the prosecutor filed an information on May 25, 1989. The information charged Thompson with two counts of sexual

1-25-91
HB 113

State of Montana, Plaintiff and Appellant, v.
Thompson, Defendant and Respondent
47 St.Rep. 1065

intercourse without consent, both felonies in violation of sec. 45-5-503, MCA, and with one count of attempted sexual assault, a felony.

Defendant filed a number of motions, requesting, among other things, a motion to dismiss Counts I and II of the information for lack of probable cause in the supporting affidavit. The District Court granted Thompson's motion, due to the fact the State failed to meet the element of "without consent" under sec. 45-5-501, MCA.

I

Did the District Court err when it granted defendant's motion to dismiss Counts I and II of the information charging defendant with sexual intercourse without consent for failure to state offenses?

We agree with the District Court that the facts in the information, in regards to Counts I and II, fail to state offenses. The code of criminal procedures requires that an affidavit be filed for application for leave to file an information. State v. Renz (Mont. 1981), 628 P.2d 644, 645. The affidavit must include sufficient facts to convince a judge that there is probable cause to believe the named defendant may have committed the crime described in the information. Section 46-11-201, MCA. If there is no probable cause, the District Court lacks jurisdiction to try the offense. State v. Davis (1984), 210 Mont. 28, 30, 681 P.2d 42, 43. This Court has held that a showing of mere probability that defendant committed the crime charged is sufficient for establishing probable cause to file a criminal charge. Judges, when receiving probable cause affidavits, should use their common sense in determining whether probable cause exists. Renz, 628 P.2d at 645; State v. Hamilton (1980), 185 Mont. 522, 532, 605 P.2d 1121, 1127, cert. denied 447 U.S. 924 (1980); State v. Miner (1976), 169 Mont. 260, 264, 546 P.2d 252, 255.

The allegations in the affidavit, however, do not indicate a probability that Thompson committed the crime of sexual intercourse without consent.

Thompson was charged with two counts of alleged sexual intercourse without consent under sec. 45-5-503, MCA. Section 45-5-503, MCA, states the following:

"A person who knowingly has sexual intercourse without consent with a person of the opposite sex commits the offense of sexual intercourse without consent . . ."

The phrase "without consent"--the key element of the crime--has a very specific definition in Montana's criminal code. This phrase is defined in sec. 45-5-501, MCA, which states in pertinent part:

"As used in 45-5-503 and 45-5-505, the term 'without consent' means:

"(i) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone; . . ."

State of Montana, Plaintiff and Appellant, v.
Thompson, Defendant and Respondent
47 St.Rep. 1065

[1] Section 45-5-501, MCA, makes it clear that the element of "without consent" is satisfied if submission of the victim is obtained either by force or by threat of imminent death, bodily injury, or kidnapping. No other circumstances relating to force or threat eliminate consent under the statute.

Thompson challenged the probable cause affidavit in the District Court, contending it failed to state any fact or circumstance showing that Jane Doe's submission to an alleged act of sexual intercourse was obtained by force or by any of the threats listed in sec. 45-5-501, MCA. In contrast, the State argues that Thompson's actions constitute sexual intercourse through force or threats. The District Court, in its opinion and order, agreed with Thompson's contentions, and found that the facts in the affidavit supporting the information failed to show the element of "without consent." In reaching this conclusion, the District Court first considered whether or not there were facts or circumstances in the probable cause affidavit to indicate that submission to the alleged act of sexual intercourse without consent was obtained "by force." In order to determine whether Thompson forced Jane Doe to submit to the sexual act, the District Court had to define the phrase "by force" since there is no definition contained in the Montana Criminal Code. The District Court in its order defined force as follows:

"The word 'force' is used in its ordinary and normal connotation: physical compulsion, the use or immediate threat of bodily harm, injury."

Next, the District Court examined the information and probable cause affidavit to determine if there were any facts or circumstances constituting force. The District Court found that "force was not alleged in the information nor in the affidavit in support of it."

In contrast, the State argues the District Court's definition of force is too limited. The State, relying on *Raines v. State* (Ga. 1989), 382 S.E.2d 738, 739, argues that intimidation and fear may constitute force. The State also contends that Thompson, in his position of authority as the principal, intimidated Jane Doe into the alleged acts. Furthermore, the State argues the fear and apprehension of Jane Doe show Thompson used force against her. We agree with the State that Thompson intimidated Jane Doe; however, we cannot stretch the definition of force to include intimidation, fear, or apprehension. Rather, we adopt the District Court's definition of force.

Other jurisdictions, such as California, have expanded the definition of force, beyond its physical connotation. *People v. Cicero* (1984), 157 Cal.App.3d 465, 204 Cal.Rptr. 582. The California Supreme Court adopted the following reasoning to expand the word force:

". . . the fundamental wrong at which the law of rape is aimed is not the application of physical force that causes physical harm. Rather, the law of rape primarily guards the integrity of a woman's

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will and the privacy of her sexuality from an act of intercourse undertaken without her consent. Because the fundamental wrong is the violation of a woman's will and sexuality, the law of rape does not require that 'force' cause physical harm. Rather, in this scenario, 'force' plays merely a supporting evidentiary role, as necessary only to ensure an act of intercourse has been undertaken against a victim's will."

Cicero, 204 Cal.Rptr. at 590.

The California Supreme Court's definition of the word force is too broad under Montana's definition of the crime. Until the legislature adopts a definition for the word "force", we must adopt the ordinary and normal definition of the word "force" as set forth by the District Court.

[2] The State in its information and accompanying affidavit complain that Thompson deprived Jane Doe of consent to the sexual act by threatening that he would prevent her from graduating from high school. The threat required in sec. 45-5-501, MCA, is a "threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone . . ." The District Court found that something more than a threat is necessary to satisfy the statutory requirement. A threat one will not graduate from high school is not one of the threats listed under sec. 45-5-501, MCA. The State argues that the definition "threat of bodily injury" includes psychological impairment. Unfortunately, the statute sets forth bodily injury, not psychological impairment. A threat that eventually leads to psychological impairment is not sufficient under the statute. The statute only addresses the results of three specific kinds of threats, and psychological impairment is not one of them.

The State urges this Court to adopt the definitions of threat set forth in sec. 45-2-101(68), MCA. Section 45-2-101(68), MCA, has no application in regard to the crime of sexual intercourse without consent. Section 45-5-501, MCA, plainly and succinctly lays out the types of threats necessary to make the victim act "without consent."

Under sec. 45-5-501, MCA, the threat also must be of "imminent death, bodily injury, or kidnapping." Thompson's threats cannot be considered imminent. The alleged sexual act and threat occurred in December of 1986. Jane Doe graduated from Hobson High School in June of 1987. Clearly, Thompson's alleged threats were not imminent.

Peppered throughout the State's brief is the contention that "under Montana law the issue of consent is a fact question, and therefore a question for the jury to decide." The State is correct, the jury is the proper trier of facts in regard to issues such as consent. However, in this case, the State's information and probable cause affidavit have failed to set forth any facts or circumstance to show that the alleged act of sexual intercourse were within the statute defining the elements of the crime. So, the issue in this case is not whether the jury was denied its role as trier of the facts, but whether the State sufficiently set forth facts or circumstances to show the element of "without consent." The court properly granted

State of Montana, Plaintiff and Appellant, v.
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defendant's motion to dismiss for lack of probable cause.

This case is one of considerable difficulty for us, as indeed it must have been for the District Court judge. The alleged facts, if true, show disgusting acts of taking advantage of a young person by an adult who occupied a position of authority over the young person. If we could rewrite the statutes to define the alleged acts here as sexual intercourse without consent, we would willingly do so. The business of courts, however, is to interpret statutes, not to rewrite them, nor to insert words not put there by the legislature. With a good deal of reluctance, and with strong condemnation of the alleged acts, we affirm the District Court.

MONTANA WOMEN'S LOBBY

P.O. Box 1099

Helena, MT 59624

406/449-7917

EX-1A
1/25/91
HB 113

HOUSE BILL 113

RECOMMEND: DO PASS

1/25/91

Mr. Chairman, members of the Committee, my name is Diane Sands, Executive Director of the Montana Women's Lobby. We rise in support of HB 113.

The technical provisions of this bill have been addressed by those who have gone before me. This needed addition to the definition of "force" is one of several changes in the Sexual Crimes section of MCA that the Montana Women's Lobby will be supporting this session. We urge adoption of HB113 on behalf of 2 of our constituencies. First, the rape crisis programs across the state that provide services to victims. Secondly, we urge adoption on behalf of the victims of sexual crimes. One in three women and one in five men are victims of a sexual assault during their lifetime. I wish I could tell you that passing this law will change those statistics, but it will not. What it will do, however, is expand the likelihood that a few more perpetrators will be brought to justice. That end result is a worthy one. We urge your support of HB 113.

25 January 91

Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
EP PAVLOVICH	HD #70	11	X	
AN ANTONIETTI	USDL VETS	11	X	
Tom Pouliot	Veterans of Foreign Wars	11	X	
JOE BRAND	Self	11	X	
Wanda Buckford	Self	SB 140	X	
Ed Sheehy	RETIRED FIREMAN	11	X	
Dick Baumberger	DSV Dept of Mont.	11	X	
John Noel Hanson	American Legion	11	X	
George O. Poston	United Veterans Com. of MT.	11	X	
John M. DENHERDER	Dept of MT Disabled American Veteran	11	X	
Am Pfeife	Women's Law Section, State Bar	HB 113	X	
RICH BROWN	MT. Board Vets Affairs	11	X	
Karen Sands	MT. Women's Lobby	113	X	
Holly Franz	Women's Law Section of State Bar	113	X	
Beth Baker	Dept of Justice	SB 22	✓	
James T. Gaendrup	Natl. Med. Assn	SB 140	✓	
Netti Cinar	Self	113	✓	
Rich McCreary	Dept Labor & Industry	HB 11	✓	
David A. Walker	SB 22	SB 22	X	

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on January 28, 1991,
at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: Robert Brown (R)

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Chairman Pinsoneault announced that he would have folders prepared for committee members concerning judicial confirmations and Supreme Court nominations. He advised the Committee they must sift through this information, and that a confirmation luncheon would also be forthcoming.

Senator Mazurek told the committee the rules require public hearings on appointments. Senator Towe said he believes the public should be given the opportunity to speak on judicial appointments if they wish. Chairman Pinsoneault agreed.

EXECUTIVE ACTION ON SENATE BILL 140

Motion:

Discussion:

EXECUTIVE ACTION ON SENATE BILL 113

Motion:

Senator Halligan made a motion that SB 113 be TABLED.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

Recommendation and Vote:

The motion made by Senator Halligan carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 113

Motion:

Discussion:

Senator Halligan said he agreed that the House amendments should be removed from the bill.

Amendments, Discussion, and Votes:

Senator Halligan made a motion to strike "significant or substantial" on page 2, line 4. He explained that the language is already clear and straightforward. The motion carried unanimously (Exhibit #4).

Recommendation and Vote:

Senator Halligan made a motion that HB 113 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1999

Date: 28 Jan 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty			
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 28, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 113 (third reading copy -- blue), respectfully report that House Bill No. 113 be amended and as so amended be concurred in:

1. Page 2, line 4.

Strike: "SIGNIFICANT OR SUBSTANTIAL"

Signed: _____
Richard Pinsoneault, Chairman

RB 1/28/91
Amd. Coord.

SK 1/28 2:45
Sec. of Senate

191254SC.SBB

Amendments to House Bill No. 113
Third Reading Copy (Blue)

For the Committee on Judiciary

Prepared by Valencia Lane
January 28, 1991

1. Page 2, line 4.

Strike: "SIGNIFICANT OR SUBSTANTIAL"